NO. COA19-384 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Appellee,

v.

TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE,

Defendants-Appellants.

****

MOTION BY THE NORTH CAROLINA LEGISLATIVE BLACK CAUCUS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

****

ROBERT E. HARRINGTON
ADAM K. DOERR
ERIK R. ZIMMERMAN
TRAVIS S. HINMAN

ROBINSON, BRADSHAW & HINSON, P.A.
101 N. Tryon St., Suite 1900
Charlotte, NC 28246
(704) 377-2536

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

The North Carolina Legislative Black Caucus (the "Caucus") respectfully moves this Honorable Court for leave to file the attached brief *amicus curiae* in support of Plaintiff North Carolina State Conference of the National Association for the Advancement of Colored People ("NAACP").

Pursuant to North Carolina Rule of Appellate Procedure 28(i), the Caucus sets forth here the nature of its interests, the issues of law its brief will address, its positions on those issues, and the reasons why it believes that an *amicus curiae* brief is desirable.

NATURE OF THE *AMICUS*'S INTEREST

The Caucus is an association of 37 North Carolina State Senators and Representatives of African American, American Indian, and Asian-American Indian heritage. It is a vehicle designed to exercise unified political power for the betterment of people of color in North Carolina and, consequently, all North Carolinians; to ensure that the views and concerns of African Americans and communities of color more broadly are heard and acted on by elected representatives; and to further develop the political consciousness of citizens of all communities and cultures.

REASONS WHY *AMICUS* SHOULD BE HEARD

As a group of minority state legislators centrally concerned with representing the voices of African Americans and communities of color in North Carolina, the Caucus brings a unique perspective to the issues before this Court. As the Caucus explains in its brief, the members of the Caucus, the people and communities of color (and, in particular, the African-American and minority voters) they represent, and the candidates who wish to join their ranks have been uniquely affected by Defendants' repeated, discriminatory acts targeted at minimizing minority voting power and reducing minority voter turnout. In particular, members of the Caucus were directly affected by Defendants' extensive racial gerrymander of state legislative districts, which concentrated minority voting power into a few districts where, by and large, minority candidates were already winning their elections with high margins of success. Likewise, the African-American and minority voters the Caucus represents were disproportionately targeted by Defendants' racial gerrymander and subsequent passage of discriminatory voting laws, which were intended to preserve Defendants' electoral gains under unconstitutionally racially gerrymandered state legislative maps.

As members of a minority group within the state legislature, the Caucus also is uniquely positioned to explain how the constitutional amendments at issue in this case lock in Defendants' policy preferences, such

that even after North Carolina voters were able to elect state representatives under constitutional maps in 2018 Defendants *still* benefit from the supermajority they wrongfully obtained through racial gerrymandering.

The Caucus's firsthand experiences with the measures that this legislature has taken to influence election outcomes make the Caucus well suited to speak to the constitutional problems with those measures.

AMICUS'S POSITION ON ISSUES OF LAW BEFORE THIS COURT

I. The trial court's order is an appropriate and proportional response to Defendants' unconstitutional actions to entrench their wrongfully procured electoral power.

The first issue the Caucus intends to address is Defendants' mischaracterization of the trial court's order as an "extreme overreach" that will lead to "chaos and confusion." The Caucus will explain that, in fact, *Defendants'* "extreme overreach"—fashioning racially gerrymandered state legislative maps, procuring a Republican supermajority in both the North Carolina State House and Senate through those unconstitutional maps, and using their supermajority power to lock in ill-gotten legislative gains by proposing constitutional amendments to the people of North Carolina—warrants a proportional response. The Caucus will further explain that the trial court's order, which holds that two constitutional amendments proposed by an unconstitutionally elected Republican supermajority are void, provides that proportional response.

The Caucus will also show that proposed constitutional amendments are distinct from other types of legislation passed by an illegally constituted legislature because they require, per the state Constitution, a three-fifths majority vote both to propose to the people and, later, to overturn. By contrast, other legislative actions require only a majority vote to undo. Because of that distinction, an unconstitutionally elected legislature—like the one Defendants created through racial gerrymandering—can use constitutional amendments, like the Voter ID and Tax Amendments at issue here, to lock in ill-gotten electoral gains even after their party no longer holds a supermajority (or even a simple majority) in the state House. For that reason, Defendants' hyperbolic claims that the trial court's order will result in widespread invalidation of legislation since 2011 are unfounded. The Caucus will argue that the trial court's order provides a narrow, administrable, and proportional remedy, and should be affirmed.

II. The legitimacy of proposed constitutional amendments passed by an illegally constituted legislature is not a political question.

The Caucus further intends to address whether the political question doctrine bars the Court from considering the constitutional issues presented in this case. The Caucus will show that Defendants' arguments in favor of applying the political question doctrine rely on outdated cases and ignore modern decisions concerning the doctrine. The Caucus will explain that,

under these modern decisions, the grounds for applying the political question doctrine are absent from this case. The Caucus will argue that this Court therefore has a duty to decide whether Defendants' actions exceeded constitutional limitations.

WHEREFORE, the North Carolina Legislative Black Caucus respectfully moves this Honorable Court to allow this motion for leave to file a brief *amicus curiae*.

[Signatures on Following Page]

Respectfully submitted this
12th day of July, 2019.

Electronically Submitted
Adam K. Doerr
N.C. Bar No. 37807
adoerr@robinsonbradshaw.com

N.C. R. App. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

Robert E. Harrington
N.C. Bar No. 26967
rharrington@robinsonbradshaw.com

Erik R. Zimmerman
N.C. Bar No. 50247
ezimmerman@robinsbradshaw.com

Travis S. Hinman
N.C. Bar No. 50779
thinman@robinsbradshaw.com

ROBINSON, BRADSHAW &
HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Telephone: (704) 377-2536
Facsimile:(704) 378-4000

Attorneys for Amicus Curiae
the North Carolina Legislative
Black Caucus

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day the foregoing was electronically filed with the North Carolina Court of Appeals and, additionally, a copy was served upon the following counsel of record via First Class U. S. mail as follows:

David Neal
Kimberley Hunter
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356
dneal@selcnc.org
khunter@selcnc.org

Counsel for Plaintiff-Appellee

Noah H. Huffstetler, III
D. Martin Warf
Nelson Mullins Riley & Scarborough LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

Counsel for Defendants-Appellants

Alexander McC. Peters
Senior Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

Irving Joyner
Post Office Box 374
Cary, NC 27512
ijoyner@nccu.edu

Daryl Atkinson
Leah Kang
Forward Justice
400 W. Main Street, Suite 203
Durham, NC 27701
daryl@forwardjustice.org
lkang@forwardjustice.org

This the 12th day of July, 2019.

Electronically Submitted
Adam K. Doerr
N.C. Bar No. 37807
adoerr@robinsonbradshaw.com

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Defendants-Appellants.

From Wake County
18-CVS-9806

****

BRIEF OF THE NORTH CAROLINA LEGISLATIVE BLACK CAUCUS AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLEE

****

ROBERT E. HARRINGTON
ADAM K. DOERR
ERIK R. ZIMMERMAN
TRAVIS S. HINMAN

ROBINSON, BRADSHAW & HINSON, P.A.
101 N. Tryon St., Suite 1900
Charlotte, NC 28246
(704) 377-2536

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BRIEF OF THE NORTH CAROLINA LEGISLATIVE BLACK CAUCUS AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLEE[1]

****

[1] No person other than the Caucus and its counsel wrote or contributed money to this brief.

ARGUMENT

I. The trial court's order provides a necessary and proportional remedy to nearly a decade of attempts by an illegal majority to entrench itself in power at the expense of minority voters and their representatives.

Defendants paint the trial court's order as "an extreme overreach" that "sits on a jurisprudential island." Def. Br. 25. But that order is properly viewed as a necessary and appropriate response to *Defendants'* "extreme overreach." That overreach began with the "most extensive unconstitutional racial gerrymander ever encountered by a federal court." *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017). And it culminated in Defendants' attempt to entrench their ill-gotten power by passing Session Laws 2018-119 and 2018-128 (the "Tax Amendment" and "Voter ID Amendment," respectively), which disproportionately affect—and in the case of Voter ID, disenfranchise—minority voters.

These actions against minority voters and their representatives and the Constitution itself demand an appropriate, proportional response, which the trial court provided by holding that an illegal legislative supermajority cannot permanently change the North Carolina Constitution through laws passed in the waning moments of its unconstitutional reign.

This Court should affirm.

To understand the extraordinary and unconstitutional lengths to which the legislature has gone to entrench power at the expense of minority legislators, candidates, and voters, some history is in order. Defendants took their first steps to expand and entrench legislative power following gains in the state legislature in the 2010 election.[2] In 2011, the new majority—not yet a supermajority—redrew North Carolina's House and Senate maps. Defendants, with the help of Republican map-drawer Dr. Thomas Hofeller, designed 28 state legislative districts to ensure that each had a 50%-plus-one majority black voting age population ("BVAP"). *Covington v. North Carolina*, 316 F.R.D. 117, 126-27 (M.D.N.C. 2016). By concentrating African-American voters in a small number of districts, Defendants reduced their overall political influence across the state. *See id.* Defendants' dilution of minority voting power was so significant that fixing it required redrawing "more than two thirds of the districts in both the House . . . and Senate"—81 (or 68%) in the House and 36 (or 72%) in the Senate. (R p 184, ¶ 11 ("Order")).[3]

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[2] Defendants were named in their official capacity, and references here to "Defendants" are generally to the legislative majority, not the individuals.

[3] At the same time Defendants designed the racially gerrymandered 2011 *state* redistricting plan, they implemented a *congressional* redistricting plan with racially gerrymandered districts. *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016), *aff'd sub nom., Cooper v. Harris*, 137 S. Ct. 1455, 1482 (2017). These unconstitutional congressional districts represent yet another attempt by Defendants to procure and maintain Republican electoral power by minimizing minority voting strength in North Carolina.

Defendants' purported justification for drawing these majority-black districts was to comply with the Voting Rights Act of 1965 (the "VRA"). *Covington*, 316 F.R.D. at 132-33. But Defendants did not have a "strong basis in evidence" for concluding the VRA required such districts. To the contrary, "Defendants knew they were increasing the [Black Voting Age Population] in districts where African-American candidates, who were purportedly also the African-American voters' candidates of choice, *were already consistently winning*." *Id.* at 173 (emphasis added). Indeed, in previous decades, "[m]any African-American General Assembly candidates . . . had electoral success even when running in non-majority-black districts." *Id.* at 125-26. These candidates won in "effective coalitional districts" in which minority citizens "form[ed] coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice." *Id.* at 133.[4]

Because Defendants had no valid justification for concentrating black voters into fewer districts, the district court concluded that all 28 districts

[4] At the trial challenging the congressional districts, former congressman and state senator Mel Watt testified he told a state legislator involved in redistricting efforts, "I'm getting 65 percent of the vote in a 40 percent black district. If you ramp my [BVAP] to over 50 percent, I'll probably get 80 percent of the vote, and that's not what the Voting Rights Act was designed to do." *Cooper*, 137 S. Ct. at 1476 & n.10. The Supreme Court described Watt's testimony as "[p]erhaps the most dramatic testimony in the trial." *Id.*

were unconstitutional racial gerrymanders. *Id.* at 176. The Supreme Court summarily affirmed. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017).

Defendants then delayed, opposed, and undermined efforts to remedy the racially gerrymandered plan. Indeed, the *Covington* court called Defendants out for "act[ing] in ways that indicate they are more interested in delay than they are in correcting this serious constitutional violation." 270 F. Supp. 3d at 884. Defendants made "no effort to draw and submit constitutional redistricting plans" before the Supreme Court summarily affirmed and opposed a special election under constitutional maps. *Id.* at 887-89. When Defendants did engage in the remedial process, the "*Covington* panel . . . expressed 'serious' concerns that several districts drawn by the General Assembly to remedy the constitutional violation either perpetuate[d] the racial gerrymander or [we]re otherwise legally unacceptable." *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 622 n.13 (M.D.N.C.), *vacated on other grounds by* 138 S. Ct. 2679 (2018).

All the while, the Republican supermajority elected under the unconstitutional maps passed a series of racially discriminatory laws designed to entrench their wrongfully procured power so that, even after the racial gerrymander was remedied, Defendants *still* would benefit from their unconstitutional actions. *See, e.g.*, *id.* (citing cases showing that "[t]he legislature elected under the racially gerrymandered 2011 districting plan

has enacted a number of pieces of voting- and election-related legislation that have been struck down by state and federal courts as unconstitutional or violative of federal law").

For example, after years of expanded voting access for African Americans, when "African American registration and turnout rates had finally reached near-parity with white registration and turnout rates [and] African Americans were poised to act as a major electoral force," the General Assembly used data regarding race-based voting practices to pass legislation that included numerous voting and voting registration measures, "all of which disproportionately affected African Americans." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016). In striking down this law, the Fourth Circuit described it as "the most restrictive voting law North Carolina has seen since the era of Jim Crow." *Id.* at 229.

The Fourth Circuit found that the General Assembly's aim in enacting this law was "to entrench itself . . . by targeting voters who, based on race, were unlikely to vote for the majority party." *Id.* at 233. In other words, a Republican supermajority in the General Assembly—elected, at least in part, as a result of racial gerrymandering—imposed barriers on voting and voting registration that would disproportionately keep African-American voters away from the polls to preserve and expand its illegitimate electoral gains.

Foiled by the Fourth Circuit, Defendants tried—through one of the amendments challenged in this case—to achieve through a constitutional amendment what they failed to achieve through the law-making process: authority to enact a voter ID law that could disproportionately impair African Americans' voting power. Defendants completed their plan to lock voter ID into the Constitution during "the final two days of the 2018 regular legislative session"—in other words, in the *final two days* they could wield the Republican supermajority they created through racially gerrymandered maps. Order ¶ 12.

With the help of those maps, Defendants succeeded. *Id.* ¶¶ 13-14. The Voter ID Amendment passed the House by "just two votes over [the] three-fifths majority required for a constitutional amendment, and in the Senate the number was just three votes over the required margin." *Id.* ¶ 13. Likewise, the Tax Amendment passed the House by "just one vote over the [required] three-fifths majority" and the Senate by "just four votes over the required margin." *Id.* ¶ 14. Had Defendants not unlawfully procured their Republican supermajority through racial gerrymandering, Defendants likely would not have had the required number of votes to put the Voter ID and Tax Amendments on the ballot. This was the basis for the trial court's determination that the racial gerrymander tainted the three-fifths majority required to amend the North Carolina Constitution.

The Legislative Black Caucus could have played a critical role in stopping these amendments by itself. Every member of the Caucus voted against the Voter ID and Tax Amendments, and both passed by the slimmest of margins—two votes for Voter ID, and one for Tax. If not for nearly a decade of unconstitutional impairment of the political power of black voters and their representatives, the result would likely have been different. Indeed, when voters were finally able to vote in districts untainted by racial gerrymandering in 2018, the Caucus added two members—which would have jeopardized Defendants' ability to pass the Amendments singlehandedly.[5]

"[A] legislature that is itself insulated by virtue of an invidious gerrymander can enact additional legislation to restrict voting rights and thereby further cement its unjustified control of the organs of both state and federal government." *Common Cause*, 279 F. Supp. 3d at 621-22. That is exactly what happened here. Defendants drew a redistricting map infected by unconstitutional, racially gerrymandered districts and obtained a Republican supermajority. As the litigation involving that map wound its way through the federal courts, Defendants repeatedly passed laws that discriminated

[5] Because the remedial map used in the 2018 election altered more than two-thirds of the House and Senate districts, Order ¶ 11, the Caucus would not have been alone in its opposition. When finally given the opportunity, African-American voters engaged in the coalition-building Defendants' racial gerrymander had prevented, combining their voting power to elect Democrats who often vote with the Caucus.

against African-American voters and, in particular, sought to entrench Republican electoral power by disenfranchising minority voters who are less likely to vote for Republican candidates. As the Fourth Circuit put it, "[t]he harms attendant to [Defendants'] unjustified race-based districting [did] not end with the enactment of an unconstitutional districting scheme. Quite the opposite, those harms [began] with the enactment of unconstitutional maps; [were] inflicted again and again with the use of those maps in each subsequent election cycle; and, by putting into office legislators acting under a cloud of constitutional illegitimacy, continue[d] unabated until new elections [were] held under constitutionally adequate districting plans." *Covington*, 270 F. Supp. 3d at 891.

In short, the starting point of the analysis must be the established record of Defendants' unconstitutional and racially targeted acts. In rejecting their effort to write the legacy of a supermajority founded in unconstitutional racial gerrymandering into the North Carolina Constitution, the trial court simply held Defendants responsible for their own failure to satisfy the preconditions the Constitution demands for its amendment. This was anything but an "overreach."

II. Invalidating the amendments challenged here will not call into question the legitimacy of other legislative acts.

In their brief, Defendants refuse to confront the consequences of their attempt to amend the North Carolina Constitution with a supermajority achieved only by unconstitutional racial gerrymandering. Instead, they devote most of their argument to claims that the trial court's order will cause chaos and confusion, require courts to make policy determinations about which laws are valid and which are not, allow collateral attacks on all legislation, and other specters. This is not so; as the trial court recognized, constitutional amendments are different. When these differences come into view, Defendants' arguments collapse.

Ordinary legislation can be passed by a simple majority, but legislation proposing changes to the Constitution must meet a higher burden—a three-fifths majority. N.C. Const. art. XIII, § 4. In adopting a Constitution that can be amended *only* by a proposal passed by a legislative supermajority, the people of North Carolina chose a system requiring strong consensus to change their constitutional order.

Defendants subverted that principle. As the trial court found, "the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state Constitution before an amendment proposal can be submitted to the people for a vote, breaking the requisite chain of popular

sovereignty between North Carolina citizens and their representatives." Order ¶ 7.

Contrary to Defendants' assertion that the court "determin[ed] that the General Assembly was a body of usurpers incapable of passing laws," the trial court limited its ruling to the amendments themselves.[6] Defendants attempt to sow confusion on this point. For example, they argue that "the three-fifths majority vote of the Legislature required for a proposed amendment is not truly unique," and that the "constitutional amendment process (at least as far as the vote of the General Assembly is required) is not entirely unique from the regular law-making process." Def. Br. 31, 20. They are wrong.

A simple majority can change ordinary legislation. Thus, a minority group like the Legislative Black Caucus can form or join a majority coalition to repeal or amend laws passed by a racially gerrymandered majority when the political tides change. And although legislative overrides of the governor's veto and proposals to amend the constitution both require a three-fifths majority, the resemblance ends there. Laws passed by overriding a veto remain laws, and a bare majority of a future legislature can repeal those laws—notwithstanding that the initial override required a supermajority.

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[6] Although Defendants' brief refers to "usurpers" and "usurping" 41 times, the Order does not use that term. It focuses on the legitimacy of the amendments, not the legitimacy of the legislature.

The permanence of constitutional amendments sets them apart. Here, after *Covington* finally forced the creation of state legislative districts untainted by racial gerrymandering, North Carolina voters broke the illegal supermajority. A future election could make the Legislative Black Caucus part of a majority coalition. But even then—despite the will of a majority of North Carolina voters, expressed in a free and fair election—the Caucus and its allies still could not undo the damage created by the illegal supermajority's unlawful acts. A constitutional amendment—unique among legislative acts—cannot be *undone* by a later majority. Removing the stain of this illegal supermajority would require *another constitutional amendment*—starting with another supermajority.[7]

This is why the trial court wrote that "the requirements for amending the state Constitution are unique and distinct from the requirements to enact other legislation," and concluded that the illegally constituted General Assembly was "therefore not empowered to pass legislation *that would amend the state's Constitution*." Order ¶ 10; *see also id.* ¶ 9 (holding it would

[7] The difficulty of undoing constitutional amendments was a significant part of their appeal for Defendants. *See, e.g.*, Speaker Tim Moore, *Taxpayer Protection Cap in State Constitution Approved by N.C. House*, http://speakermoore.com/taxpayer-protection-cap-state-constitution-approved-n-c-house/ (emphasizing that the Tax Amendment would "safeguard" tax cuts and protect taxpayers from future increases).

not cause chaos and confusion to declare two session laws and corresponding amendments—not all legislation—void *ab initio*).

Refusing to engage these points, Defendants try to avoid the consequences of their illegal actions by advancing a parade of horribles. These are not serious legal concerns. For example, their claim that the "trial court held that the North Carolina General Assembly lacked authority to pass legitimate legislation," Def. Br. 14, simply has no basis in the Order being appealed.

Defendants' attempt to marshal legal authority for their position also misses the mark. Many of these cases are extraordinarily if not grotesquely outdated, such as the 1916 decision that the right of women to vote and hold office presents a political question. Def. Br. 21. Moreover, the underlying legal arguments in many of these cases bordered on frivolous. For example, it should not be a surprise that a driver challenging a hit-and-run conviction failed to persuade the highest court of pre-statehood Hawaii that his conviction should be thrown out because there was an apportionment issue in the territorial legislature. Def. Br. 17 (citing *Territory v. Tam*, 36 Haw. 32, 36 (1942)). That courts have rejected such far-fetched claims says nothing about the proper outcome here. If anything, it establishes that our courts would have little tolerance for frivolous claims attempting to exploit the limited precedent established by affirming the trial court's order.

The army of strawmen Defendants have marshaled must not dissuade this Court from enforcing the North Carolina Constitution. A ruling affirming the trial court's determination that Defendants cannot use an illegal and racially gerrymandered supermajority to make permanent changes to the North Carolina Constitution would be exactly that—and nothing more.

III. This case does not present a political question.

Defendants also argue that the courts cannot address the serious constitutional issues presented here because this case raises a political question. If this Court accepted that argument, it would mean our courts could never stop a racially gerrymandered General Assembly from amending the North Carolina Constitution—no matter the harm to minority rights.

Defendants' argument evokes a bygone era when courts deployed political-question-type reasoning to reject challenges to state constitutional amendments that disenfranchised African Americans in the Jim Crow South. *See generally* Richard H. Pildes, *Democracy, Anti-Democracy, and the Canon*, 17 Const. Comment. 295 (2000) (discussing *Giles v. Harris*, 189 U.S. 475 (1903), and its historical context). But it is out of step with modern decisions on the political question doctrine. Those decisions make clear that the courts not only can, but must, rule on challenges to state laws that target minority voting rights. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 216 (1962) (challenge to legislative apportionment did not present a political question); *Gomillion v.*

Lightfoot, 364 U.S. 339, 346-47 (1960) (same for racial gerrymandering). More generally, they make clear that when "a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits." *Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 253 (1997).[8]

To be sure, modern decisions recognize that a case can present a political question when it "revolve[s] around policy choices and value determinations constitutionally committed for resolution" to the political branches. *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001); *see also Baker v. Carr*, 369 U.S. at 216. But this case does not turn on policy choices committed to the political branches. It turns on an "issue of constitutional interpretation" that the courts have "a duty to decide," *Cooper v. Berger*, 370 N.C. 392, 412, 809 S.E.2d 98, 110 (2018)—namely, whether the North Carolina Constitution permits a racially gerrymandered legislature to propose constitutional amendments. Defendants' contrary arguments (Def. Br. 17-24) have no merit.

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[8] The decision on which Defendants rely, *Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316 (1939), predates the articulation of today's political question doctrine in decisions like *Baker v. Carr*. In any event, *Leonard* does not control. It involved a challenge to regular legislation based on an argument the General Assembly should have been reapportioned after the 1930 census, *Leonard*, 3 S.E.2d at 324, not a challenge to constitutional amendments based on a final judicial ruling that the General Assembly was racially gerrymandered. It does not support the argument that this case presents a political question.

Textual commitment to another branch. Defendants contend that the Constitution commits the issue here to the General Assembly because it grants each house the power to judge the "qualifications" of its members. Def. Br. 23-24 (quoting N.C. Const. art. II, § 20). But this case does not concern the "qualifications" of any member (which are listed in Article II and have no connection to racial gerrymandering). It concerns the power of the legislature as a whole—as Defendants admit elsewhere in their brief. *See id.* at 33-34 (attempting to distinguish cases about officers because they did "not involve the full Legislature").

Judicially manageable standards vs. policy determinations. Defendants also miss the mark in contending that courts lack judicially manageable standards for distinguishing between actions that a racially gerrymandered legislature can and cannot take, and thus must use policy judgments to draw that distinction on a case-by-case basis. Def. Br. 18-21. The permanence of constitutional amendments distinguishes them from all other legislative action. *See supra* 11-13. That distinction is a categorical, judicially manageable one between constitutional amendments and other legislation that rests on the supermajority requirement in the constitutional text itself—not on policy judgments. Because this approach singles out proposed constitutional amendments for unique treatment, Defendants err in

portraying it as "an attack on any law that the General Assembly has passed." Def. Br. 18.

Respect for coordinate branches. Defendants further err when they argue that a ruling on the merits of this case would demonstrate a "lack of respect" for the legislature. Def. Br. 22. Every ruling that the legislature has violated the Constitution "might in some sense be said to entail a 'lack of respect,'" but that "cannot be sufficient to create a political question." *United States v. Munoz-Flores*, 495 U.S. 385, 390 (1990). Otherwise, courts could never rule on constitutional challenges to legislative action, and the many recent decisions holding that the General Assembly has violated constitutional limitations would have been wrongly decided. *See, e.g.*, *North Carolina v. Covington*, 137 S. Ct. 2211 (2017); *Cooper v. Harris*, 137 S. Ct. 1455, 1481-82 (2017); *McCrory*, 831 F.3d at 214-15; *Cooper v. Berger*, 370 N.C. at 422, 809 S.E.2d at 116; *State v. Berger*, 368 N.C. 633, 649, 781 S.E.2d 248, 258 (2016). So would the decision of the three-judge panel in this litigation, which held that the General Assembly violated the state Constitution by adopting misleading ballot questions for two of its proposed amendments—and rejected Defendants' effort to hide behind the political question doctrine. *See Cooper v. Berger*, No. 18-CVS-9805, 2018 WL 4764150, at *2-3, *13-15 (N.C. Super. Aug. 21, 2018).

In any event, Defendants' plea for respect rings hollow in this case. Defendants and their party disrespected the Legislative Black Caucus, its members, and its constituents when they used racial gerrymandering to diminish minority representation in the General Assembly, and when they went on to wield their resulting supermajority to propose a constitutional amendment on voter identification that further threatens minority voting rights. It would add insult to injury for the courts now to refuse, based on "respect" for this legislature, to decide whether it violated the North Carolina Constitution in the process. The Court should reach the merits—and rule that a racially gerrymandered legislature lacks the power to amend our Constitution.

CONCLUSION

For the foregoing reasons, as *amicus curiae*, the North Carolina Legislative Black Caucus asks this Court to affirm.

Respectfully submitted this 12th day of July, 2019.

Electronically Submitted

Adam K. Doerr
N.C. Bar No. 37807
adoerr@robinsonbradshaw.com

N.C. R. App. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

Robert E. Harrington
N.C. Bar No. 26967
rharrington@robinsonbradshaw.com

Erik R. Zimmerman
N.C. Bar No. 50247
ezimmerman@robinsbradshaw.com

Travis S. Hinman
N.C. Bar No. 50779
thinman@robinsbradshaw.com

ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Telephone: (704) 377-2536
Facsimile:(704) 378-4000

Attorneys for Amicus Curiae the North Carolina Legislative Black Caucus

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, I hereby certify that the foregoing brief, which is prepared using a 13-point proportional font, contains fewer than 3,750 words (excluding the caption, index, table of authorities, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This the 12th day of July, 2019.

Electronically Submitted
Adam K. Doerr

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day the foregoing was electronically filed with the North Carolina Court of Appeals and, additionally, a copy was served upon the following counsel of record via First Class U. S. mail as follows:

David Neal
Kimberley Hunter
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356
dneal@selcnc.org
khunter@selcnc.org

Counsel for Plaintiff-Appellee

Noah H. Huffstetler, III
D. Martin Warf
Nelson Mullins Riley & Scarborough LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

Counsel for Defendants-Appellants

Alexander McC. Peters
Senior Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

Irving Joyner
Post Office Box 374
Cary, NC 27512
ijoyner@nccu.edu

Daryl Atkinson
Leah Kang
Forward Justice
400 W. Main Street, Suite 203
Durham, NC 27701
daryl@forwardjustice.org
lkang@forwardjustice.org

This the 12th day of July, 2019.

Electronically Submitted
Adam K. Doerr
N.C. Bar No. 37807
adoerr@robinsonbradshaw.com